IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 11694 of 2004

Between:

M/s.Krishna Constructions, rep., by its Managing Partner,
Sri R.Jagdish Chandra Reddy, s/o Sri Damodar Reddy,
r/o 2-7-10, Excise Colony, Hanamkonda, Warangal District.

..... PETITIONER

AND

1 Hyderabad Metro Water Supply & Sewerage Board, S.R.Nagar, Hyderabad rep., by its Chief General Manager (Engineering) Project,

Construction Circle-III.
2 Hyderabad Metro Water Supply & Sewerage Board, Khairtabad, Hyderabad, rep., by its Officer on Special Duty, Krishna Drinking Water Supply Project.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a writ of mandamus declaring the action of the first respondent in replacing the Tender condition No.3 of Tender Notification No.4/DB/CGM/PCC-III/O&M KDWSP/2004-05, dated 4-6-2004 as arbitrary and illegal and set aside the undated corrigendum to the Tender Notice replacing the original condition No.3 of the tender Notice of the first respondent.

Counsel for the Petitioner: MR.S.SATYAM REDDY

Counsel for the Respondents: MS.M.VENKATESWARI

The Court made the following:

ORDER:

The petitioner questions the action of the first respondent-Board in replacing the condition No.3 of tender notification dated 4.6.2004 as arbitrary and illegal and to set aside the corrigendum issued to the said tender notification.

The petitioner is a contractor and submits that it has wide experience in maintenance of pipelines and supply of contract labour including technical personnel to various Government Departments. The petitioner has also handled several projects in the last five years and executed several such contracts of the respondent Board. While so, the first respondent has issued tender notification dated 4.6.2004 inviting tenders from the private agencies for operation and manning of Stage-I, Phase-I of Krishna Drinking Water Supply Project. It is stated that Class-II Contractors were eligible to execute the said work as per the tender notification. The date of issue of tender documents was 9.6.2004 to 29.6.2004 and the last date for receiving the tenders was 30.6.2004 upto 2.00 p.m. The petitioner paid the sum of Rs.89,000/- towards E.M.D and Rs.5,000/- towards the cost of tender documents on 28.6.2004. When the petitioner asked for tender documents, he was informed that the same would be given on 1.7.2004. The tender documents were given on 1.7.2004 with a change of condition No.3 of the original tender notification relating to the experience of the intending tenderers. It is stated that the change in the tender condition relating to the experience was done with malafide intention to deprive the petitioner from tendering the said work and to help others to get the work and, therefore, the change of

condition is illegal, arbitrary and liable to be set aside.

This Court by an order dated 9.7.2004 in W.P.M.P.No.14869 of 2004 suspended the corrigendum in replacing the original condition No.3 of the tender notification dated 4.6.2004. Respondents have filed a counter affidavit and W.V.M.P.No.6 of 2005 to vacate the said interim order.

Heard both counsel appearing for the respective parties elaborately.

The first respondent has invited tenders vide tender notification dated 4.6.2004 from registered contractors as mentioned in column No.5 of annexure to the said notification. The nature of the work to be carried out includes operation and manning the Stage-I, Phase-I of Krishna Dinking Water Supply Project for a period of one year at the various assets developed by HMWS&SB all along Hyderabad – Nagarjunasagar State Highway from K.M.116/0 to Santoshnagar Cross Roads in the City of Hyderabad. Condition No.3 of the said original tender notification reads as follows:

> "The tenderer should have past experience in the last five years in having supplied contract labour to any of the Government Departments/Government Undertakings, for similar jobs."

There are as many as ten conditions mentioned in the original tender notification with regard to nature of work, date of issue of tender documents, date of receipt of tender documents, earnest money deposit etc. The last date to issue the tender documents is 29.6.2004 and the last date for submitting the documents is 30.6.2004. Even before the last date of submission of tender documents, the first respondent issued corrigendum, which was published on 30.6.2004 in Eenadu and Times of India newspapers, informing all the bidders that condition No.3 of the original tender notification dated 4.6.2004 has been deleted and the following is substituted:

> "Past experience in the last 5 years in having maintained water supply pipelines of PSC/MS/CI/DI of size not less

than 600 mm., dia of not less than 7.5 K.M., long in one or more contracts added together for a period of at least one year in any of the Government Departments/Government Undertakings. The experience in having maintained such water supply pipelines in the defect liability period as a pre-requisition in the pipeline contracts will also be considered."

It is stated that the above corrigendum was also kept in website – www.hyderabadwater.gov.in of the respondent Board. In view of the said corrigendum, the last date for receipt of applications and date of issue of tender documents and due date for receipt of tenders have been extended. As per the extended dates, the last date of receipt of applications for supply of tender documents is extended upto 14.7.2004, the tender documents will be issued from 2.7.2004 and the last date for receipt of tender documents is 15.7.2004. Though the petitioner filed an application for tender documents on 28.6.2004, the respondent Board informed him about the issuing of corrigendum and the tender documents will be issued from 2.7.2004 onwards. But as the documents were ready by 1.7.2004, four other contractors/firms have collected them on 1.7.2004 itself. The petitioner also collected the documents on 3.7.2004 and thus a total number of five contractors have received the tender documents after the corrigendum.

On a perusal of the tender documents, particularly Part-III, the background and scope of contract of Section III – conditions of contract of volume-I of bid documents, specifies such experience will have to be added for awarding contract. Therefore, the scope of contract is clearly specifies that such contract is to be confined only to manning and operation of the various assets by keeping required personnel on contract system at various places, who have executed the works upto the defect liability period of two years from the date of handing over the respective assets to the respondent Board. A careful reading of the original tender notification also indicates that such an experience is essential in view of the nature of the work. But,

in condition No.3 of the original tender notification, the said requirements have not been mentioned. Therefore, the issuance of corrigendum has become necessary and, accordingly, the first respondent has changed the past experience at condition No.3 of the original tender notification.

In view of the importance of the said project which has to be executed prudently and urgently with technical skill for providing drinking water to the public of twin cities, the modification of tender condition No.3 by the respondent Board cannot be said to be illegal and arbitrary. The said modification was done only for proper operation and manning of Krishna Drinking Water Supply for a period of one year through private agency, but not to deprive the petitioner as alleged. I do not see any malafide intention on the part of the respondent Board in issuing the corrigendum to the tender notice replacing the original condition No.3. The petitioner has no fundamental right to get the award of work in his favour unless he fulfils the said changed stipulation. The petitioner has not at all specifically pleaded about the malafide intention or arbitrary action on the part of the respondents to favour somebody. I am of the opinion that the petitioner is also at liberty to participate in the tender proceedings, if he is eligible to get the contract, after fulfilling the changed condition which was widely published in newspapers and as many as five applications have been received. There is no malafide intention or arbitrary action on the part of the respondents in stipulating the said experience for awarding the contract. Therefore, I do not see any merit in the writ petition and the petitioner is not entitled for any relief to issue writ of mandamus declaring the action of the first respondent in replacing the condition No.3 of the original tender notification dated 4.6.2004 as arbitrary and illegal.

For the above reasons, the interim order dated 9.7.2004 granted by this Court in W.P.M.P.No.14869 of 2004 is vacated. The writ petition is, accordingly, dismissed. No order as to costs.

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(V.ESWARAIAH, J.)

25.3.2004

Note:

Issue copy within two days.

B.O.

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To

1 Chief General Manager (Engineering) Project, Hyderabad Metro Water Supply & Sewerage Board, Construction Circle-III, S.R.Nagar, Hyderabad.
2 The Officer on Special Duty, Hyderabad Metro Water Supply & Sewerage Board, Krishna Drinking Water Supply Project, Khairtabad, Hyderabad.

3. 2 copies to Mr.M.Venkateswari, Standing Counsel, HMWS &SB, Hyderabad.

4. 2 C.D. copies